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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

SHENY URIZAR,

Plaintiff and Appellant,

v.

MIGUEL ANGEL PINEDA,

Defendant and Respondent.

B286746

(Los Angeles County  
Super. Ct. No. BC658098)

APPEAL from a judgment of the Superior Court of Los Angeles County, William F. Fahey, Judge. Reversed.

Law Offices of Ugo O. Asobie and Ugo O. Asobie for Plaintiff and Appellant.

No appearance for Defendant and Respondent.

Sheny Urizar (Urizar) applied for entry of a default judgment against Miguel Angel Pineda (Pineda) for breach of an oral loan agreement. The trial court denied the application and dismissed Urizar’s complaint with prejudice, finding that the breach of contract claim was barred by the two-year statute of limitations. We consider whether the trial court fully understood the materials before it at the default judgment “prove up” hearing, which led to a judgment of dismissal rather than the entry of judgment for Urizar.

## I. BACKGROUND

### A. *The Operative Form Complaint*

Urizar sued Pineda in April 2017, asserting causes of action for breach of contract and fraud.<sup>1</sup>

The operative form complaint alleges that in August 2014, Urizar loaned \$16,000 to Pineda pursuant to an oral agreement. The “essential terms” of the agreement obligated Pineda to repay the loan in monthly installments of at least \$1,000, with the first installment due in October 2014. According to the complaint, plaintiff began making the installment payments in October 2014 as required, but in or about March 2016, Pineda took the position that Urizar never loaned him the \$16,000. Instead, Pineda

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<sup>1</sup> The appellate record does not include all the materials filed by the parties in the trial court. The order dismissing Urizar’s action (discussed *post*) makes reference only to her breach of contract claim and does not mention the fraud claim. The Case Summary docket sheet that is in the record, however, indicates that in August 2017, Urizar filed a partial dismissal without prejudice, which suggests that Urizar voluntarily dismissed her fraud claim.

maintained all the installment payments he had made were towards the \$35,000 sale price of an auto repair shop that Urizar sold to Pineda in a separate transaction that took place around the time of the \$16,000 loan.

Pineda never responded to Urizar's complaint, and the court clerk entered Pineda's default in July 2017.

*B. The Default Judgment Proceedings*

Urizar applied to have the court enter a default judgment against Pineda and filed, in support thereof, a "case summary" document and a declaration with exhibits. The materials submitted, which included copies of a number of negotiated checks, provided additional information concerning the allegations in the complaint to which Pineda's default had been entered.

According to the materials submitted by Urizar, she loaned Pineda \$16,000 in cash, in or about August 2014, pursuant to an oral agreement. Later that same month, Urizar and Pineda entered into a separate transaction. This time pursuant to a written agreement, Pineda agreed to purchase an auto body repair business from Urizar for \$35,000. Under the terms of this agreement, Pineda was responsible for making an initial payment of \$15,000 to Urizar and then paying off the remaining \$20,000 in 36 monthly installments, with the first installment due on October 1, 2014.

On October 1, 2014, Pineda, using a check drawn on an account for "MP Auto Repair," paid Urizar \$1,200. Between October 2014 and October 2015, Pineda, using the same MP Auto Repair account, made at least 11 payments of \$1,200 each to Urizar. Although the checks did not indicate on their face that

they were installment payments on the \$16,000 loan (as opposed to installment payments for the auto repair business purchase), Urizar understood them to be loan payments.

Beginning in October 2014 and continuing through March 2016, Pineda paid Urizar \$555 each month by check. Like the \$1,200 checks, the \$555 checks were written on the MP Auto Repair account. However, unlike the \$1,200 checks, which did not specify on their face what the payments were for, each \$555 check (with one exception) included a notation that the payments were being made in connection with the purchase of the auto repair shop.

In March 2016, after not having received an installment payment in “a while” for the \$16,000 oral loan agreement, Urizar reminded Pineda of his obligation to pay back the money. In response, Pineda denied ever borrowing \$16,000 from Urizar and instead stated all of the payments that he made to her between October 2014 and March 2016 were for the purchase of the auto repair business. Pineda thereafter made no further payments toward the purchase of the repair business.

After Urizar filed the aforementioned materials in support of her request for entry of default judgment, the trial court held an unreported hearing on Urizar’s request. Although there is no transcript of the hearing, the court issued a two-page ruling after taking the matter under submission, and that ruling is included in the record.

Instead of entering the default judgment as requested, the court ordered Urizar’s action dismissed on statute of limitations grounds. Noting the applicable statute of limitations was two years for breach of an oral contract, the court found Urizar’s claim was time-barred because she was on notice of Pineda’s

alleged breach of the loan agreement well in advance of two years before she filed suit in April 2017. This was the trial court’s reasoning: “[P]laintiff contends that defendant agreed to pay \$1000 per month on the oral loan commencing in October 2014. But in [her] . . . declaration, at par[agraph] 13, plaintiff admits that defendant never made such payments. Instead, defendant [asserts] ‘between October 2014 until March 2016, [defendant] paid me the agreed \$555 monthly installments towards the \$20,000 balance of the auto body shop loan.’ Then in par[agraph] 15, plaintiff admits that, ‘on or about March 2016 I reminded [defendant] that he had not paid me the monthly installment for the areas (sic) of the \$16,000 loan.’ Plaintiff provides no evidence that defendant ever made one \$1000 payment on the oral loan. In other words, defendant was—quite obviously—in breach of the oral agreement as of October 31, 2014. [¶] . . . Thus, plaintiff had two years after October 31, 2014[,] within which to bring the instant action. [She] failed to do so and, by [her] own admissions, [her] claim is time barred.”

## II. DISCUSSION

The trial court misunderstood the evidence before it at the default judgment “prove up” hearing. There was indeed evidence (at least as alleged by Urizar, which is all that matters given Pineda’s default) that Pineda had made payments toward the \$16,000 loan, and Urizar never admitted otherwise. The statute of limitations did not start running until Pineda breached the oral loan agreement, which, by the complaint’s allegation and Urizar’s default judgment evidence, was March 2016 at the latest or November 2015 at the earliest. In either case, Urizar’s breach of contract claim was timely and it was error to dismiss it. We

shall therefore reverse and remand for consideration of what damages Urizar is entitled to upon entry of default judgment.

*A. Standard of Review*

Application of a statute of limitations based on facts alleged in the complaint is a legal question subject to de novo review.<sup>2</sup> (*Aryeh v. Canon Business Solutions, Inc.* (2013) 55 Cal.4th 1185, 1191; *Gilkyson v. Disney Enterprises, Inc.* (2016) 244 Cal.App.4th 1336, 1340.)

*B. Requirements for Entry of a Default Judgment*

A defendant's default operates as an admission of the matters well-pleaded in a complaint. (*Kim v. Westmoore Partners, Inc.* (2011) 201 Cal.App.4th 267, 281 (*Kim*).) "The 'well-pleaded allegations' of a complaint refer to ""all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law."" [Citation.]" (*Ibid.*) As a result of the well-pleaded complaint rule, a plaintiff at a prove-up hearing under

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<sup>2</sup> The appellate record in this case is adequate for review—albeit barely. Urizar would have done better to provide a settled or agreed statement of the default judgment hearing, but the trial court's written order is sufficiently detailed to permit us to responsibly discharge our appellate function. (Compare *Rhule v. WaveFront Technology, Inc.* (2017) 8 Cal.App.5th 1223, 1229, fn. 5 ["This is not a case where the trial court's written rulings (or other materials in the record) sufficiently illuminate the factual and legal predicate for the trial court's orders. The written rulings included in the record are quite succinct, which is further indication that a reliable record of what transpired at the hearings is indispensable for our review"].)

Code of Civil Procedure section 585<sup>3</sup> need not introduce evidence in support of the complaint's allegations of liability. (*Carlsen v. Koivumaki* (2014) 227 Cal.App.4th 879, 899-900.) A plaintiff's burden with respect to his or her alleged damages, however, is different.

Where, as here, the relief sought in a complaint is more complicated than a ministerial award of compensatory damages, a plaintiff who seeks a default judgment must request entry of the judgment by the court. (§ 585, subds. (a)-(b); *Kim, supra*, 201 Cal.App.4th at p. 287.) The plaintiff must affirmatively establish that he or she is entitled to the specific judgment requested: "The court shall hear the evidence offered by the plaintiff, and shall render judgment in the plaintiff's favor for that relief, not exceeding the amount stated in the complaint, . . . as appears by the evidence to be just." (§ 585, subd. (b); *Kim, supra*, at p. 287.)

"It is imperative in a default case that the trial court take the time to analyze the complaint at issue and ensure that the judgment sought is not in excess of or inconsistent with it. It is . . . the duty of the court to act as gatekeeper, ensuring that only the appropriate claims get through." (*Heidary v. Yadollahi* (2002) 99 Cal.App.4th 857, 868.) "[W]here a complaint does not state a cause of action or where it shows no grounds for relief, the default of the defendant does not improve it, because . . . '[t]he default admitted nothing more than was alleged in the complaint . . . .' [Citations.]" (*Taliaferro v. Davis* (1963) 216 Cal.App.2d 398, 408-409.) In other words, "[i]f the complaint fails to state a cause of action or the allegations do not support the

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<sup>3</sup> Undesignated statutory references that follow are to the Code of Civil Procedure.

demand for relief, the plaintiff is no more entitled to that relief by default judgment than if the defendant had expressly admitted all the allegations. Such a default judgment [would be] erroneous . . . .” (6 Witkin, Cal. Procedure (5th ed. 2008) Proceedings Without Trial, § 183; accord, *Kim*, *supra*, 201 Cal.App.4th at p. 282 [default judgment reversed where plaintiff’s complaint failed to state any cognizable cause of action against defendants]; *Molen v. Friedman* (1998) 64 Cal.App.4th 1149, 1153-1154.)

*C. The Trial Court Erred in Dismissing the Action As Time-Barred*

A statute of limitations begins to run when the cause of action accrues. (*Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 806 (*Fox*).) Generally, the accrual date is ““when [the cause of action] is complete with all of its elements.”” (*Aryeh v. Canon Business Solutions, Inc.*, *supra*, 55 Cal.4th at p. 1191.) Accordingly, a cause of action for breach of contract accrues at the time of the breach, and the statute of limitations begins to run at that time. (*Romano v. Rockwell Internat., Inc.* (1996) 14 Cal.4th 479, 488; *Amen v. Merced County Title Co.* (1962) 58 Cal.2d 528, 534 [“Even if [the] plaintiff’s action were not based on a written contract, the statute would not run against her until she knew or should have known the facts that constituted the breach of defendant’s duty”].) The statute of limitations for “[a]n action upon any contract, obligation or liability not founded upon an instrument in writing” is two years. (§ 339, subd. (1).)

A plaintiff’s inability to discover a cause of action may occur “when it is particularly difficult for the plaintiff to observe or understand the breach of duty, or when the injury itself (or its

cause) is hidden or beyond what the ordinary person could be expected to understand.” (*Shively v. Bozanich* (2003) 31 Cal.4th 1230, 1248.) Consequently, the delayed discovery rule, as our Supreme Court has explained, “delays accrual until the plaintiff has, or should have, inquiry notice of the cause of action.” (*Fox, supra*, 35 Cal.4th at pp. 807-808.) To get the benefit of the delayed discovery rule, a plaintiff must allege facts in the complaint to support its application. More specifically, a plaintiff must plead facts showing “(1) the time and manner of discovery and (2) the inability to have made earlier discovery despite reasonable diligence.” [Citation.]” (*Id.* at p. 808, italics omitted.)

Both of these prerequisites are present here. Pineda’s course of performance made it difficult for Urizar to detect the breach of the loan agreement. During the first year of the loan, Urizar received at least 11 payments of \$1,200 each from Pineda. Each such payment was consistent with the terms of the loan agreement, none of those checks indicated on their face that they applied to the purchase of the auto repair business, and each of those checks was separate from the monthly \$555 checks Urizar received from Pineda that were expressly for the purchase of the repair business. On these facts, Urizar could reasonably believe Pineda was repaying the \$16,000 loan essentially as agreed and would have little if any ability to discover Pineda’s repudiation of the loan agreement until he did so expressly in March 2016.

Urizar made no admissions to the contrary in the submissions she filed in support of the request for entry of a default judgment against Pineda—and the trial court was incorrect to find otherwise. The trial court read paragraph 13 of Urizar’s declaration as an admission that Pineda never made the agreed-upon loan payments (in excess of \$1,000 each month), but

that is not what the paragraph says. Rather, it states only that Pineda made \$555 monthly payments *toward the auto repair shop purchase* between October 2014 and March 2016. The key paragraphs in Urizar’s declaration for purposes of *the loan payments* are paragraphs 4 and 5, which state: “4. Between October[ ] 2014 until October[ ] 2015, . . . Pineda paid me \$1,200 monthly for the \$16,000 loan that I gave him. [¶] 5. Hereby attached as Exhibit ‘A’ are checks for the said payments that . . . Pineda paid to me from October[ ] 2014 until October[ ] 2015 for the said \$16,000 loan.”<sup>4</sup>

The trial court therefore mistakenly believed Urizar “provide[d] no evidence that [Pineda] ever made one \$1000 payment on the oral loan.” This mistake fatally undermines the court’s statute of limitations rationale for dismissing the action, a rationale that turned on admissions Urizar did not in fact make.

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<sup>4</sup> The exhibits are attached as averred (except for checks in February and September 2015 that do not affect our delayed discovery conclusion).

## DISPOSITION

The judgment is reversed and the matter is remanded for a new hearing on Urizar's request for entry of a default judgment against Pineda, including a determination of whether Urizar has established a prima facie case for damages. Urizar shall recover any costs she may have incurred on appeal.

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BAKER, J.

We concur:

RUBIN, P. J.

MOOR, J.